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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-317-W - ORDER NO. 90-819 ✓
SEPTEMBER 16, 1990

IN RE: Application of Robert E. Fox to) ORDER
abandon a well located at 120) APPROVING
Virginia Pine Lane, Lexington,) ABANDONMENT
South Carolina, providing water)
service to one resident of)
Lexington, South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an application filed on April 1, 1990, by Mr. Robert E. Fox (the Applicant) requesting permission to abandon a well located at 120 Virginia Pine Lane, Lexington, South Carolina, which now serves Mr. Willie E. Nix and his family, residents of Lexington, South Carolina.

The matter was duly noticed to the public and a Petition to Intervene was filed by Mr. Willie E. Nix and Janie Nix (the Intervenors). A public hearing was held relative to this matter at 11:45 a.m., on August 16, 1990, in the Commission's Hearing Room at 111 Doctors Circle, Columbia, South Carolina, before Commissioners Bowers, Fuller, and Butler with Vice Chairman Yonce presiding. The Applicant and Intervenors appeared pro se. Sarena D. Burch, Esquire, represented the Commission Staff.

Testimony on behalf of the Applicant was given by Mr. Michael E. Fox, a co-owner of the well. He stated that the Applicant had purchased the land on which the well is located more than one year ago and had, since its purchase, sold water to the Nix family at a cost of \$35.00 per month. He told the Commission that the Applicant had not intended to enter the business of supplying water to the public, but that this service had been provided to help the Intervenors until such time as they were able to get their own well installed. The Applicant had been receiving payment of \$35.00 per month up to March of 1990, though payment was often late. In March, the Applicant notified the Intervenor that service would be terminated effective April 1, 1990. Mr. Fox indicated that service was to be terminated because the Applicant was unwilling to continue to seek payment from the Intervenor. The Applicant further testified that the electric meter on the well was registered in the name of the Intervenor; that all piping and pumps were already on the well at the time of the purchase of the property; and that the Applicant incurs no cost or expense as a result of the operation of the well, other than the monthly indebtedness on the property itself. Mr. Fox indicated that after abandonment, the Applicant intends to use the well for his own purposes in the future.

Mr. Willie E. Nix presented testimony in opposition to the abandonment of the well. He testified that the agreement between the parties was that the Applicant would continue to supply water

to the Intervenor's household for as long as the Intervenor needed the water service or until such time as the Intervenor was able to have his own well installed. He stated that though he was late on occasion with payments on the monthly charge, there was no problem with the continuation of the supply of water to his household until he reported to Animal Control authorities the fact that dogs owned by the Applicant had made attacks on his children. He further stated that he was financially unable to pay for a well to be dug on his property at this time, but that he believed he could obtain financing within six (6) months to a year. He testified that he had paid for the pipe and all electrical equipment comprising the well when it was installed seven years ago and now performed all maintenance and upkeep himself.

Mrs. Janie Nix also testified in behalf of the Intervenor and reiterated Mr. Nix's testimony as to the reasons why the Applicant seeks to abandon at this time. She stated that though the Nix family had tried to raise the money necessary to have a well dug, they had been unsuccessful because of medical bills. She also testified that she believed the Applicant was now preparing to utilize the well himself in that the Applicant was clearing the land on which the well was located as in preparation for the use of a tenant.

After a thorough review of the evidence in the record, the Commission finds that the request of the Applicant to abandon the well in question should be granted. Needless to say, the

Applicant's position is a procedural quagmire. He has testified that he has for some time now, supplied water to a portion of the public at a fixed rate of pay, though he has never been licensed by this Commission to provide this service. He has admittedly been receiving payments for the supply of water, again without adhering to any regulation of this Commission. Notwithstanding the fact that there was only one customer for the water he supplied, the Applicant qualifies as a public utility under Section 58-5-10 (3) of the Code of Laws of South Carolina, as amended (1976), in that he is a "person furnishing or supplying in any manner ...water ... to the public, or any portion thereof, for compensation." Yet he has also informed the Commission that he never intended to provide such services as an ongoing business but did so only to help out his neighbor. Now he alleges he no longer wishes to continue this service because of the difficulties of collecting payment from the Intervenor.

The reason underlying the Applicant's decision for the cessation of service is disputed by the Intervenor. However, the Intervenor has admitted that the Applicant had experienced some difficulty in obtaining payment because of the financial problems the Intervenor was experiencing. His testimony also indicated that these same problems would continue into the future. The testimony of both parties also indicates that the Applicant is expecting to use the well for his own purposes in the future. Though the Intervenor has testified to some financial difficulties with obtaining an alternate source of water, i.e., the inability to immediately finance the cost of having a well dug, the testimony

does not indicate that this is impossible. Indeed, he has indicated that he can get this done if given some time. The testimony also establishes that there are alternatives other than the installation of a well which may solve the problem, such as the possibility of obtaining service from Carolina Water Service, Inc., which services a nearby community. Therefore, though the Commission finds that, based on the testimony of the Applicant, the request to abandon the well should be granted, the right to abandon shall become effective eight (8) months from the date of this Order so that the Intervenor will have a reasonable time within which to obtain an alternate source of water.

As previously mentioned, the Applicant has never submitted himself to the authority of the Commission under S.C. Code Ann., Section 58-5-210 (1976) to regulate the rates and service of every public utility. Therefore, he has, throughout the course of his sale of water to his neighbor, lacked the authority to charge a fee for the water he supplied. Absent a formal examination of the rate being charged, the Commission cannot allow the Applicant to continue to charge for the water being used. Therefore, no further monies may be collected by the Applicant. The testimony of both parties has established that the Applicant incurs no cost, expense, or upkeep (other than the monthly payment on the land on which the well sits) in the provision of water service.

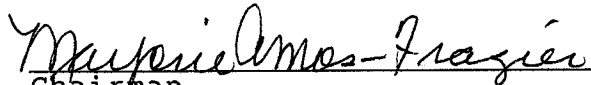
IT IS THEREFORE ORDERED:

1. That the request for abandonment of the well is granted, but the right to abandon shall not become effective until eight (8) months from the date of this Order.

2. That the Applicant cannot charge the Intervenor for water service during that eight (8) month period.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)